

### **REMARKS**

This is in response to Office Action mailed on 27 June 2007 in which claims 14, 27 and 28 were rejected under 35 U.S.C. §112, first paragraph, claims 4, 6-7, 27-30, 34, 35 and 38 were rejected under 35 U.S.C. §102(b) and claims 9, 11, 13-20, 22, 25, 31, 32, 36 and 37 were rejected under 35 U.S.C. §103(a).

#### **Claim Rejections – 35 U.S.C. §112, first paragraph**

In the Office Action, the Examiner rejected claims 14, 27 and 28 based upon a disclosure which was not enabling. In particular, the Examiner stated that “[w]heels are critical or essential to the practice of the invention, but not included in the claim(s) is not enabled by the disclosure.” In light thereof, the aforementioned claims have each been amended to define the present invention as including “ground engageable wheels connected to the platform”. Applicant believes this should overcome the aforementioned rejection. Reconsideration of claims 14, 27 and 28 is respectfully requested.

#### **Claim Rejections – 35 U.S.C. §102(b)**

In the Office Action, the Examiner rejected claims 4, 6-7, 27-30, 34, 35 and 38 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 4,186,841 issued to Buckley et al. (hereinafter “the Buckley patent”). Applicant respectfully disagrees.

As M.P.E.P. § 2114 states, apparatus claims must be structurally distinguishable from the prior art. Structural differences are the overriding concern when rejecting claims based upon anticipation. In short, the prior art reference cannot anticipate the claim if there is any structural difference. Further, to anticipate a claim, the reference must teach every element of the claim. M.P.E.P. § 2131. “A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently, in a single prior art reference.” (emphasis added) *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987). “The identical invention must be arranged as required by the claim....” *In re Bond*, 910 F.2d 831, 15 U.S.P.Q.2d 1566 (Fed. Cir. 1990).

With this Amendment, claim 27 has been amended to include the language of claim 4 (now cancelled) and claim 28 has been amended to include the language of claim 29 (now cancelled). Specifically, claims 27 and 28 define the invention as including a channel member fixedly attached *to an underside of the platform for receiving the handle*, wherein the handle *slidably disposes within the channel member* while in the *slidable position*. In the Office Action, the Examiner stated that the Buckley patent discloses a handle in a slidable position at Figure 4B (wherein plate 117b or support column 117 are no where near the space defined by 101, 114, 104). The Examiner also stated that the Buckley patent discloses a handle at 117b and a channel “...generally indicated by that space defined by 101, 114, 104...” However, in the first full sentence at page 7 of the Office Action, the Examiner explicitly stated that the Buckley patent does not “...disclose a channel member fixedly attached to an underside of the platform...”, nor “...a handle connectable to the platform...” For the record, the Applicant respectfully agrees with the Examiner’s latter position and not the former with regard to the Buckley patent disclosing a channel member. As such, it is not understood how plate 117b, or support column 117 with end wall 115, could be considered a handle as defined by claims 27 and 28 of the present invention. (Buckley, column 2, lines 46-47, 50). Nor is it understood how one skilled in the art could perceive support column 117 to be a handle. Further, and without acquiescing that the space between support foot 101, vertical support 114 and support foot 104 could even be considered a channel member, Applicant respectfully points out that in no way can such space receive plate 117b (or support column 117 with end plate 115 for that matter) while in the slidable position (as depicted in Figure 4B). Not only is it a physical impossibility, but the Buckley patent does not even contemplate removing support column 117 from support 101. Simply put, and as the Examiner stated on page 7 of the Office Action, plate 117b is not a handle. Further, neither plate 117b nor support column 117 are slidably disposable within the spaces between support foot 101, vertical support 114 and support foot 104, as is required by claims 27 and 28 of the present invention. Both claims 27 and 28 specifically define the present invention as including a channel member fixedly attached to an underside of the platform for receiving the handle wherein the handle slidably disposes within the channel member while in the slidable position. This is neither

disclosed nor suggested by the Buckley patent. Moreover, as previously discussed, claims 27 and 28 have also been amended to define the invention as including ground engageable wheels. The Buckley patent neither suggests nor discloses any wheels. Because each and every element as set forth in either claim 27 or 28 is not found, either expressly or inherently, in the Buckley patent, claims 27 and 28 are not anticipated. Reconsideration of claims 27 and 28 are therefore respectfully requested. Further, because claims 6 and 38 depend in some fashion from claim 27, and claims 7, 30, 34 and 35 depend in some fashion from claim 28, each of the aforementioned claims are also novel. Reconsideration of claims 6, 7, 30, 34, 35 and 38 is respectfully requested.

Claim Rejections – 35 U.S.C. §103(a)

In the Office Action, the Examiner rejected claims 9, 11, 20, 22, 25, 32 and 37 under 35 U.S.C. §103(a) as being obvious over the Buckley patent in view of U.S. Patent 4,209,183 issued to Jones et al. In so doing and with respect to claim 20, the Examiner stated that the Buckley patent discloses a handle 117b and a channel (generally indicated by that space defined by 101, 114, 104) fixedly attached to a platform underside 108. ....” However, in the first full sentence at page 7 of the Office Action, the Examiner explicitly states that the Buckley patent does not “...disclose a channel member fixedly attached to an underside of the platform....” Further, being that member 108 is in fact a removable sidewall (Buckley, column 3, line 13), it will be assumed that the Examiner meant support frame 105. Even so, claim 20 defines the present invention as including a channel member ***fixedly attached to an underside of the platform for receiving the handle.*** With this Amendment, claim 20 has been amended to further define the channel member as receiving the handle while in the stowed position. For the same reasons as already described herein with respect to claims 27 and 28, the Buckley patent neither teaches nor suggests that the space defined by 101, 114, 104 can in fact receive plate 117b as put forth by the Examiner. As mentioned, it is a physical impossibility that either space between support foot 101, vertical support 114 and support foot 104 can receive plate 117b or support column 117, or that it is even contemplated to remove support column 117 (and 120) from support foot 101 (and 104). The Buckley patent simply does not disclose or suggest a channel member for

receiving a handle while in the stowed position. Therefore, because neither the Buckley patent nor the Jones patent, either singularly or in combination, teach or disclose each and every element as set forth by claim 20, then claim 20 is non-obvious over the prior art. Reconsideration of claim 20 is respectfully requested. Further, because claims 22, 25 and 37 depend from claim 20, said claims are also non-obvious over the prior art. Reconsideration of claims 22, 25 and 37 is respectfully requested. Further, because claims 9 and 11 depend from claim 27, and it is believed that claim 27 is novel and non-obvious over the prior art, then claims 9 and 11 are also novel and non-obvious over the prior art. Reconsideration of claims 9 and 11 are respectfully requested.

In the Office Action, claims 13 and 31 were rejected under 35 U.S.C. §103(a) as being obvious over the Buckley patent in view of U.S. Patent No. 6,095,533 issued to Balolia. Claim 13 depends from claim 27. Claim 31 depends from claim 28. Because it is believed that claims 27 and 28 are novel, non-obvious and in allowable form, then claims 13 and 31 are also novel, non-obvious and in allowable form. Reconsideration of claims 13 and 31 are respectfully requested.

At page six of the Office Action, the Examiner rejected claims 14, 17-19 and 36 under 35 U.S.C. §103(a) as being obvious over the Buckley patent in view of U.S. Patent No. 1,582,045 issued to Howe. It should be noted, however, that at page 10 of the Office Action, the Examiner indicated that both claims 14 and 36 would be held allowable stating, *inter alia*, that the prior art does not disclose the invention as described by claims 14 and 36. The current status of claims 14 and 36 is therefore not fully understood. However, comparing both the Buckley patent and the Howe patent, Applicant believes claims 14 and 36 to be non-obvious in view thereof. Claim 14 of the present invention defines the handle as having a tongue portion spaced-apart from and extending parallel to the rigid member. Further, the handle of claim 14 is lockable to the platform by positioning the handle to dispose the locking plate ***between*** the ***tongue portion*** and the ***rigid member***. In rejecting claim 14, the Examiner held on page 6 of the Office Action that plate 117b (or rather the Applicant believes the Examiner meant support column 117) was a handle and that support foot 101 was a locking plate, and that somehow by positioning support column 117, plate 117b is disposed between support foot 101 and support column 117. The Applicant

respectfully disagrees that one skilled in the art could look at the Buckley patent and determine that either 117b or 117 is a “handle” as defined in claim 14 of the present invention. This position appears to be supported by the Examiner for on page 7 the Examiner held that the Buckley patent does not disclose “...a handle connectable to the platform comprising a unitary rigid member slidably disposable within the channel member and between the first and the second spaced-apart members...” nor “...a tongue portion spaced-apart from and extending... parallel to the rigid member....” The Applicant agrees. And neither does the Howe patent teach or disclose a tongue portion spaced-apart from and extending parallel to the rigid member of the handle. Thus, by the Examiner’s own admission, neither the Buckley patent, nor the Howe patent, either singularly or in combination, teach each and every element of claim 14, which is therefore non-obvious over the two references.

Regardless, the Examiner apparently combines the handle of the Howe patent (which does not have a tongue portion) with plate 117b of the Buckley patent to conclude that the combined references teach a handle having a tongue portion spaced-apart from and extending parallel to the rigid member, wherein the handle is lockable to the platform by positioning the handle to dispose the locking plate between the tongue portion and the rigid member. However, nothing in the Buckley patent even remotely suggests that support column 117 can be used as a handle. Nor would one skilled in the art perceive support column 117 to function as a handle. Support columns 117 and 120 are just that; support columns. As indicated at column 2, lines 45-62 and at column 3, lines 33-36 of the Buckley patent, support columns 117 and 120 (with respective end wall 115) are pivotally engageable with support feet 101 and 104, respectively, and can serve, in addition to being walls, both for nesting or stacking another pallet thereon. No mention is ever made of using support columns 117 or 120 as a handle, and indeed they do not function as such. The only mention of a handle in the Buckley patent is with reference to 109b at column 3, lines 12-26, which is attached to the removable sidewall 109. The Applicant therefore concludes that not only would one skilled in the art not combine the Buckley patent with the Howe patent to achieve a handle having a tongue portion spaced-apart and extending from a rigid portion of the handle wherein the handle is lockable to the platform by

positioning the handle to dispose the locking plate between the tongue portion and the rigid member, but neither the Buckley patent nor the Howe patent, singularly or in combination, disclose or teach a *handle having a tongue portion*. As such, Applicant believes claim 14 to be non-obvious over the prior art. Reconsideration of claim 14 is respectfully requested. Further, because claims 17-19 and 36 depend in some fashion from claim 14, the aforementioned claims are also believed to be non-obvious over the prior art. However, claim 36 has been amended to replace the term --member-- with the term “portion” for proper antecedent basis. Reconsideration of claims 17-19 and 36 are respectfully requested.

In the Office Action, the Examiner rejected claim 15 under 35 U.S.C. §103(a) as being obvious over the Buckley patent in view of the Howe patent and the Baloia patent. Claim 15 depends from claim 14. Because it is believed that claim 14 is novel and non-obvious over the prior art, then claim 15 is also novel and non-obvious over the prior art. Reconsideration of claim 15 is respectfully requested.

In the Office Action, the Examiner rejected claim 16 under 35 U.S.C. §103(a) as being obvious over the Buckley patent in view of the Howe patent and the Jones patent. It should be noted, however, that on page 10 of the Office Action, the Examiner indicated that claim 16 would be held allowable if rewritten in independent form. In any event, claim 16 depends from claim 14. Because it is believed that claim 14 is novel and non-obvious over the prior art, then claim 16 is also novel and non-obvious over the prior art. Reconsideration of claim 16 is respectfully requested.

In the Office Action, the Examiner rejected claim 23 under 35 U.S.C. §103(a) as being obvious over the Buckley patent in view of the Jones patent and the Baloia patent. Claim 23 depends from claim 20. Because it is believed that claim 20 is novel and non-obvious over the prior art, then claim 23 is also novel and non-obvious over the prior art. Reconsideration of claim 23 is respectfully requested.

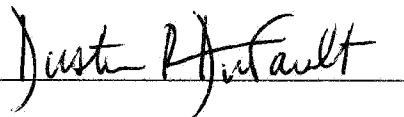
**CONCLUSION**

For the aforementioned reasons, it is now believed that claims 6, 7, 9, 11, 13-20, 22, 23, 25, 27, 28, 30-32 and 34-38 are all in order for allowance. Reconsideration and a Notice of Allowance for claims 6, 7, 9, 11, 13-20, 22, 23, 25, 27, 28, 30-32 and 34-38 are respectfully requested.

If the Examiner believes that a phone interview would be helpful, he is respectfully requested to contact Applicant's attorney, Dustin R. DuFault, at 612-250-4851. The Director is authorized to charge any fee deficiency required by this paper or credit any overpayment to Deposit Account Number 50-3738.

Respectfully submitted,  
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